

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

AF HOLDINGS LLC,

Plaintiff,

v.

JOHN DOE,

Defendant.

Case No.: 12-04219

ORDER TO SHOW CAUSE

On August 9, 2012, Plaintiff AF Holdings LLC (“AFH”) filed its original complaint in this matter, which was originally assigned to Magistrate Judge Laporte. ECF No. 1. On August 24, 2012, AFH filed an *ex parte* application for leave to take limited discovery prior to a Rule 26 conference. ECF No. 5. The case was subsequently reassigned to Judge Koh as the presiding judge and Magistrate Judge Grewal as the referral judge. On November 1, 2012, AFH filed a renewed *ex parte* application for leave to take limited discovery prior to a Rule 26 conference. ECF No. 9. Magistrate Judge Grewal granted this renewed application on November 9, 2012, permitting AFH to serve a subpoena on the Internet Service Provider (“ISP”) providing Doe’s internet access to obtain information identifying the Doe Defendant so that AFH could complete service of process on him. ECF No. 10. Judge Grewal’s order allowed AFH to immediately serve a subpoena on Doe’s ISP to obtain identifying information for Doe, including name, address, telephone number, and email address. *Id.* at 2. The order gave the ISP 30 days to serve Doe and

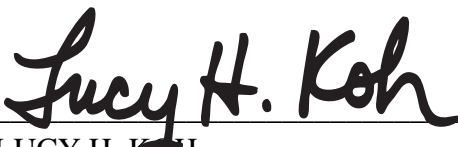
1 gave both the ISP and Doe 30 days from the date of service in which to object to the subpoena. *Id.*
 2 at 2-3. If both Doe and the ISP failed to object, the ISP was required to produce, within 10 days,
 3 the information responsive to the subpoena to AFH. *Id.*

4 Federal Rule of Civil Procedure 4(m) requires a plaintiff to serve a defendant within 120
 5 day after it files the complaint. A court must dismiss a case without prejudice if a plaintiff has not
 6 complied with Rule 4(m), unless the plaintiff shows good cause for its failure to serve defendant.
 7 Fed. R. Civ. P. 4(m). 145 days have passed since the filing of the original complaint and 53 days
 8 have passed since the issuance of Judge Grewal's expedited discovery order, but no proof of
 9 service has been filed.

10 Under Rule 4(m), AFH was required to have filed proof of service by December 7, 2012.
 11 AFH did not. Accordingly, the Court ORDERS AFH to show cause why this action should not be
 12 dismissed for failure to serve the Doe Defendant as required by Rule 4(m) by January 11, 2013.
 13 *See, e.g., Patrick Collins Inc. v. Does 1-1219*, No. 10-04468-LB (N.D. Cal. Aug. 29, 2011) (Beeler,
 14 M.J.) (issuing order to show cause). The Court will hold a hearing on AFH's response on January
 15 16, 2013, at 2:00 p.m., in conjunction with the case management conference set for that date.

16 **IT IS SO ORDERED.**

17 Dated: January 1, 2013


 LUCY H. KOH
 United States District Judge